

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

No. 38188-5-II

Respondent,

v.

JOHNNY DUKE TURNER

UNPUBLISHED OPINION

Appellant.

Penoyar, A.C.J. — Johnny Turner appeals his conviction for unlawful possession of a stolen vehicle, arguing that he received ineffective assistance of counsel.¹ We affirm.

FACTS

Because Turner raises only procedural arguments, we need not review the substantive facts. At arraignment, the trial court set Turner’s trial date as March 18, 2008. On March 18, 2008, Turner’s counsel moved for a continuance because he needed additional time to prepare. The court continued the trial date to April 24, 2008. Turner declined to sign the continuance order.

On April 14, 2008, the court granted Turner’s counsel’s motion for a continuance because he was “[t]rying to coordinate dispo[sition] [with] Spokane County case.” Clerk’s Papers (CP) at 7. The court continued the trial date to May 29, 2008. Turner signed this continuance order. On April 17, 2008, the court allowed John Felliesen to withdraw as counsel and Aaron Talney to substitute as counsel.

On May 29, 2008, Talney was in trial on another criminal case, so an attorney standing in

¹ A commissioner of this court initially considered Turner’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

for him moved for a continuance. Turner, who was still in custody, expressed his displeasure at another continuance. He stated that he had been accepted into drug court once his warrants in Spokane County were resolved. The court continued the trial date to June 23, 2008. Turner declined to sign this continuance order.

On June 12, 2008, Turner filed pro se motions to dismiss based on a violation of his speedy trial right and ineffective assistance of counsel. On June 16, 2008, Turner's counsel moved for another continuance because he had not received a response from Spokane County about resolving its warrants. Turner opposed a further continuance because he was still in custody. The court continued the trial date to July 16, 2008. Turner signed this continuance order.

On July 8 and 15, 2008, Turner filed additional pro se motions to dismiss based on a violation of his speedy trial right. On July 16, 2008, Turner filed a request to proceed pro se with stand-by counsel in order to preserve his speedy trial rights. The court granted his request and continued the trial date to July 22, 2008. Turner's trial began on that date. After Turner waived his right to a jury trial, the court ruled that Turner could argue his motions to dismiss pro se but could not represent himself during the bench trial. The court denied Turner's motions to dismiss and proceeded with the bench trial. After the bench trial, the court found Turner guilty as charged.

ANALYSIS

Turner argues that his conviction should be reversed because he received ineffective assistance of counsel before trial began. To establish ineffective assistance of counsel, Turner must demonstrate that his counsel's performance fell below an objective standard of

reasonableness and that as a result of that deficient performance, the result of his case probably would have been different. *State v. McFarland*, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1995); *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). He contends his counsel's delays in contacting Spokane County to resolve his warrants there were deficient performance, and that had counsel performed adequately, he would have been able to enter drug court rather than go to trial. However, he fails to show his counsel's performance fell below an objective standard for reasonableness. While counsel could have been more energetic in communicating with Spokane County, the record indicates that they tried to reach officials there on at least three occasions. Turner's frustration with having been in custody for six months awaiting trial is understandable, however, he elected to proceed to trial even after the trial court advised him that he faced a sentence of up to 18 months if he was convicted. While the delays contributed to his decision, they did not force him to proceed to trial. Turner does not demonstrate that his conviction should be reversed on grounds of ineffective assistance of counsel. We affirm.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record. RCW 2.06.040.

Penoyar, A.C.J.

We concur:

Houghton, J.

38188-5-II

Hunt, J.